



DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AP26

Automobile or Other Conveyance and Adaptive Equipment Certificate of Eligibility for Veterans or Members of the Armed Forces With Amyotrophic Lateral Sclerosis Connected to Military Service

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) published an Interim Final Rule on February 25, 2015, to amend its adjudication regulations to provide a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment for all veterans with service-connected amyotrophic lateral sclerosis (ALS) and servicemembers serving on active duty with ALS. The amendment authorized automatic issuance of a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment to all veterans with service-connected ALS and members of the Armed Forces serving on active duty with ALS. The intent of this final rule is to confirm the amendment made by the interim final rule without change.

DATES: Effective Date: This final rule is effective [insert date of publication in Federal Register].

Applicability Date: The provisions of this regulatory amendment apply to all applications for a certificate of eligibility for an automobile or other conveyance and adaptive equipment allowance pending before VA on or received after February 25, 2015.

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Chief, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on February 25, 2015 (80 FR 10001), VA amended its regulation at 38 CFR 3.308 to provide a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment for all veterans with service-connected amyotrophic lateral sclerosis (ALS) and servicemembers serving on active duty with ALS.

VA provided 60 days in which to comment on the amendments made by the Interim Final Rule, with the comment period ending April 27, 2015. We received three comments. Two of the commenters expressed support for this amendment. The third commenter discussed the initial evaluation rating and entitlement to special monthly compensation for veterans with service-connected ALS and servicemembers serving on active duty with ALS. Because those comments were not directed to the subject of this amendment, we make no changes based on those comments. Based on the rationale set forth in the interim final rule published in the Federal Register at 80 FR 10001 on February

25, 2015, VA is adopting the provisions of the interim final rule as a final rule without change.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), we found that there was good cause to dispense with advance public notice and opportunity to comment on the interim final rule and good cause to publish that rule with an immediate effective date. The interim final rule was necessary to implement immediately the Secretary's decision to establish entitlement for a certificate of eligibility for automobile or other conveyance and adaptive equipment for all veterans with service-connected ALS and members of the Armed Forces serving on active duty with ALS. Delay in the implementation of this rule would be impracticable and contrary to the public interest, particularly to veterans and members of the Armed Forces serving on active duty.

Because the survival period for persons suffering from ALS is generally 18-48 months or less from the onset of symptoms, any delay in establishing entitlement for a certificate of eligibility for automobile or other conveyance and adaptive equipment eligibility would have been extremely detrimental to veterans and members of the Armed Forces serving on active duty who are currently afflicted with ALS. Any delay in implementation until after a public-comment period could have delayed modifying the regulated certificate of eligibility process, depriving ALS veterans and members of the Armed Forces serving on

active duty with ALS of quick and efficient access to automobile or other conveyance and adaptive equipment benefits.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising

out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for VA Regulations Published From FY 2004 Through FYTD.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule will not affect any small entities. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the final regulatory flexibility analysis requirements of section 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces and 64.109, Veterans Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on January 7, 2016, for publication.

Accordingly, the Department of Veterans Affairs adopts the interim rule published February 25, 2015 (80 FR 10001), as final without change.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure; Claims; Disability benefits; Health care; Pensions; Veterans.

Dated: January 8, 2016.

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Office of the General Counsel,
Department of Veterans Affairs.

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